

# ARKANSAS SUPREME COURT

No. CR 06-1486

JAMES WESLEY JOHNSON  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered March 8, 2007

PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF  
PULASKI COUNTY, CR 90-394, HON.  
JOHN W. LANGSTON, JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

## PER CURIAM

In 1990, James Wesley Johnson was found guilty by a jury of two counts of delivery of a controlled substance, and sentenced as a habitual offender to forty years' imprisonment on each count, to be served concurrently. Subsequently, he sought postconviction relief in the trial court, and this court dismissed the appeal from the denial of his petition. *Johnson v. State*, CR 95-497 (Ark. Oct. 10, 1995) (per curiam). Later, appellant filed a petition for postconviction relief pursuant to our now superseded Criminal Procedure Rule 36.4. The circuit court denied the petition, and this court affirmed on appeal. *Johnson v. State*, 333 Ark. 1, 968 S.W.2d 51 (1998). Next, appellant sought to correct the sentence pursuant to Ark. Code Ann. § 16-90-111 (1991). The trial court denied the petition, and we affirmed. *Johnson v. State*, CR 03-1248 (Ark. Oct. 7, 2004) (per curiam).

In 2006, appellant filed a petition for writ of habeas corpus in the trial court. The trial court denied the petition, and appellant, proceeding pro se, has lodged an appeal in this court from that order.

Now before us is appellant's pro se motion for extension of time to file appellant's brief. We

need not consider this motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

Any petition for writ of habeas corpus is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.<sup>1</sup> Arkansas Code Annotated §16-112-105 (Repl. 2006) requires certain procedural requirements be met when seeking a court to issue a writ of habeas corpus. The writ must be directed to the person in whose custody the prisoner is detained. Additionally, the writ should be issued by a court that has personal jurisdiction over the defendant. Otherwise, although a court may have subject-matter jurisdiction to issue the writ, a writ of habeas corpus cannot be returned to the court issuing the writ; a court does not have personal jurisdiction to issue and make returnable before itself a writ of habeas corpus where the petitioner is in another county. *See, e.g., State Dept. of Public Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975); *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark. 397, 190 S.W.2d 522 (1945).

Here, appellant is in the custody of the Arkansas Department of Correction at the East Arkansas Regional Unit in Lee County. However, appellant filed his petition for writ of habeas

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<sup>1</sup>Act 1780 of 2001, as amended by Act 2250 of 2005, and codified as Ark. Code Ann. §§ 16-112-201 – 207 (Repl. 2006), provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted.

corpus in the Circuit Court of Pulaski County. As appellant's petition for writ of habeas corpus was not filed pursuant to Act 1780, appellant should have filed his petition in the Circuit Court of Lee County. The Circuit Court of Pulaski County does not have personal jurisdiction over appellant and cannot release a prisoner who was not in custody within that county. *See Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Therefore, the Circuit Court of Pulaski County cannot issue a writ of habeas corpus that would be returnable to the court to effect appellant's release, and appellant cannot obtain the specific relief he seeks in this matter.

Appeal dismissed; motion moot.